

same issue(s), and this previous determination or decision has become binding by either administrative or judicial action.

(7) The enrollee abandons the request for hearing. An ALJ may conclude that an enrollee has abandoned a request for hearing when the ALJ hearing office attempts to schedule a hearing and is unable to contact the enrollee after making reasonable efforts to do so.

(8) Consistent with § 423.1972(c)(1), the ALJ dismisses a hearing request if a request clearly shows that the amount in controversy is less than that required under § 423.1970.

(b) *Notice of dismissal.* The ALJ mails a written notice of the dismissal of the hearing request to the enrollee at his or her last known address. The written notice provides that there is a right to request that the MAC vacate the dismissal action.

(c) *Discontinuation of a hearing.* Consistent with § 423.1972(c)(2), the ALJ discontinues a hearing and does not rule on the substantive issues raised in the appeal if, after a hearing is initiated, the ALJ finds that the amount in controversy is less than the amount required under § 423.1970.

**§ 423.2054 Effect of dismissal of a request for a hearing before an ALJ.**

The dismissal of a request for a hearing is binding, unless it is vacated by the MAC under § 423.2108(b).

**§ 423.2062 Applicability of policies not binding on the ALJ and MAC.**

(a) ALJs and the MAC are not bound by CMS program guidance, such as program memoranda and manual instructions, but will give substantial deference to these policies if they are applicable to a particular case.

(b) If an ALJ or MAC declines to follow a policy in a particular case, the ALJ or MAC decision must explain the reasons why the policy was not followed. An ALJ or MAC decision to disregard a policy applies only to the specific coverage determination being considered and does not have precedential effect.

**§ 423.2063 Applicability of laws, regulations and CMS Rulings.**

(a) All laws and regulations pertaining to the Medicare programs, including, but not limited to Titles XI, XVIII, and XIX of the Social Security Act and applicable implementing regulations, are binding on ALJs and the MAC.

(b) CMS Rulings are published under the authority of the CMS Administrator. Consistent with § 401.108 of this chapter, rulings are binding on all CMS components, and on all HHS components that adjudicate matters under the jurisdiction of CMS.

**§ 423.2100 Medicare appeals council review: general.**

(a) Consistent with § 423.1974, the enrollee may request that the MAC review an ALJ's decision or dismissal.

(b) When the MAC reviews an ALJ's written decision, it undertakes a de novo review.

(c) The MAC issues a final decision, dismissal order, or remands a case no later than the end of the 90 calendar period beginning on the date the request for review is received (by the entity specified in the ALJ's written notice of decision), unless the 90 calendar day period is extended as provided in this subpart or the enrollee requests expedited MAC review.

(d) If an enrollee requests expedited MAC review, the MAC issues a final decision, dismissal order or remand as expeditiously as the enrollee's health condition requires, but no later than the end of the 10 calendar day period beginning on the date the request for review is received (by the entity specified in the ALJ's written notice of decision), unless the 10 calendar day period is extended as provided in this subpart.

**§ 423.2102 Request for MAC review when ALJ issues decision or dismissal.**

(a)(1) An enrollee to the ALJ hearing may request a MAC review if the enrollee files a written request for a MAC review within 60 calendar days after receipt of the ALJ's written decision or dismissal.

(2) An enrollee may request that MAC review be expedited if the appeal involves an issue specified in § 423.566(b)

but does not include solely a request for payment of Part D drugs already furnished.

(i) If an enrollee is requesting that the MAC review be expedited, the enrollee submits an oral or written request within 60 calendar days after the receipt of the ALJ's written decision or dismissal. A prescribing physician or other prescriber may provide oral or written support for an enrollee's request for expedited review.

(ii) The MAC must document all oral requests for expedited review in writing and maintain the documentation in the case files.

(3) For purposes of this section, the date of receipt of the ALJ's written decision or dismissal is presumed to be 5 calendar days after the date of the notice of the decision or dismissal, unless there is evidence to the contrary.

(4) The request is considered as filed on the date it is received by the entity specified in the notice of the ALJ's action.

(b) An enrollee requesting a review may ask that the time for filing a request for MAC review be extended if—

(1) The request for an extension of time is in writing or, for expedited reviews, in writing or oral. The MAC must document all oral requests in writing and maintain the documentation in the case file.

(2) The request explains why the request for review was not filed within the stated time period. If the MAC finds that there is good cause for missing the deadline, the time period will be extended. To determine whether good cause exists, the MAC uses the standards outlined at § 405.942(b)(2) and § 405.942(b)(3).

(c) An enrollee does not have the right to seek MAC review of an ALJ's remand or an ALJ's affirmation of an IRE's dismissal of a request for reconsideration.

**§ 423.2106 Where a request for review may be filed.**

When a request for a MAC review is filed after an ALJ has issued a written decision or dismissal, the request for review must be submitted to the entity specified in the notice of the ALJ's action. If the request for review is timely filed with an entity other than the en-

tity specified in the notice of the ALJ's action, the MAC's adjudication period to conduct a review begins on the date the request for review is received by the entity specified in the notice of the ALJ's action. Upon receipt of a request for review from an entity other than the entity specified in the notice of the ALJ's action, the MAC sends written notice to the enrollee of the date of receipt of the request and commencement of the adjudication timeframe.

**§ 423.2108 MAC Actions when request for review is filed.**

(a) *General.* Except as specified in paragraph (c) of this section, when an enrollee requests that the MAC review an ALJ's decision, the MAC will review the ALJ's decision de novo. The enrollee requesting review does not have a right to a hearing before the MAC. The MAC will consider all of the evidence admitted into the administrative record. Upon completion of its review, the MAC may adopt, modify, or reverse the ALJ's decision or remand the case to the ALJ for further proceedings. Unless the MAC's review is expedited as provided in paragraph (d) of this section, the MAC must issue its action no later than 90 calendar days after receiving the request for review, unless the 90 calendar day period has been extended as provided in this subpart.

(b) *Review of ALJ's dismissal.* When an enrollee requests that the MAC review an ALJ's dismissal, the MAC may deny review or vacate the dismissal and remand the case to the ALJ for further proceedings.

(c) *MAC dismissal of request for review.* The MAC will dismiss a request for review when the individual or entity requesting review does not have a right to a review by the MAC, or will dismiss the request for a hearing for any reason that the ALJ could have dismissed the request for hearing.

(d) *Expedited reviews.* (1) *Standard for expedited reviews.* The MAC must provide an expedited review if the appeal involves an issue specified in § 423.566(b), but does not include solely a request for payment of Part D drugs already furnished, enrollee's prescribing physician or other prescriber indicates, or the MAC determines that applying the standard timeframe for